

LIABILITIES AND CAPITAL—Continued

	Per books	Value
B	10,000	15,000
C	10,000	15,000
Total	30,000	45,000

(b) *Presence of section 751 property.* The section 1245 property is an unrealized receivable of the partnership to the extent of the potential section 1245 income in respect of the property. Since the fair market value of the property (\$15,000) is lower than its recomputed basis (\$18,000), the excess of the fair market value over its adjusted basis (\$9,000), or \$6,000, is the potential section 1245 income of the partnership in respect of the property. The partnership has no other section 751 property.

(c) *The properties exchanged.* In the distribution C received his share of section 751 property (potential section 1245 income of \$2,000, i.e., 1/3 of \$6,000) and his share of section 1245 property (other than potential section 1245 income) with a fair market value of \$3,000, i.e., 1/3 of (\$15,000 minus \$6,000), and an adjusted basis of \$3,000, i.e., 1/3 of \$9,000. In addition he received \$4,000 of section 751 property (consisting of \$4,000 (\$6,000 minus \$2,000) of potential section 1245 income) and section 1245 property (other than potential section 1245 income) with a fair market value of \$6,000 (\$9,000 minus \$3,000) and an adjusted basis of \$6,000 (\$9,000 minus \$3,000). C relinquished his interest in \$1,000 of cash and \$9,000 of land. Assume that the partners agree that the \$4,000 of section 751 property in excess of C's share was received by him in exchange for \$4,000 of land.

(d) *Distributee partner's tax consequences.* C's tax consequences on the distributions are as follows:

(1) *The section 751(b) sale or exchange.* C is treated as if he received in a current distribution 4/9ths of his share of the land with a basis of \$2,667 ($18,000/27,000 \times \$4,000$). Then C is considered as having sold his 4/9ths share of the land to the partnership for \$4,000, realizing a gain of \$1,333. C's basis for the remainder of his partnership interest after the current distribution is \$7,333, i.e., the basis of his partnership interest before the current distribution (\$10,000) minus the basis of the land treated as distributed to him (\$2,667).

(2) *The part of the distribution not under section 751(b).* Of the \$15,000 total distribution to C, \$11,000 (\$2,000 of potential section 1245 income and \$9,000 section 1245 property other than potential section 1245 income) is not within section 751(b). Under section 732(b) and (c), C's basis for his share of potential section 1245 income is zero (see paragraph (c)(5) of this section) and his basis for \$9,000 of section 1245 property (other than potential section 1245 income) is \$7,333, i.e., the amount of the remaining basis for his part-

nership interest (\$7,333) reduced by the basis for his share of potential section 1245 income (zero). Thus C's total aggregate basis for the section 1245 property (fair market value of \$15,000) distributed to him is \$11,333 (\$4,000 plus \$7,333). For an illustration of the computation of his recomputed basis for the section 1245 property immediately after the distribution, see example 2 of paragraph (f)(3) of § 1.1245-4.

(e) *Partnership's tax consequences.* The tax consequences to the partnership on the distribution are as follows:

(1) *The section 751(b) sale or exchange.* Upon the sale of \$4,000 potential section 1245 income, with a basis of zero, for 4/9ths of C's interest in the land, the partnership consisting of the remaining members has \$4,000 ordinary income under sections 751(b) and 1245(a)(1). See section 1245(b)(3) and (6)(A). The partnership's new basis for the land is \$19,333, i.e., \$18,000, less the basis of the 4/9ths share considered as distributed to C (\$2,667), plus the partnership purchase price for this share (\$4,000).

(2) *The part of the distribution not under section 751(b).* The analysis under this subparagraph should be made in accordance with the principles illustrated in paragraph (e)(2) of examples 3, 4, and 5 of this paragraph.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960, as amended by T.D. 6832, 30 FR 8575, July 7, 1965; T.D. 7084, 36 FR 268, Jan. 8, 1971; T.D. 8586, 60 FR 2500, Jan. 10, 1995; T.D. 8847, 64 FR 69915, Dec. 15, 1999; T.D. 9137, 69 FR 42559, July 16, 2004]

§ 1.752-0 Table of contents.

This section lists the major paragraphs that appear in §§ 1.752-1 through 1.752-7.

§ 1.752-1 Treatment of partnership liabilities.

(a) Definitions.

(1) Recourse liability defined.

(2) Nonrecourse liability defined.

(3) Related person.

(4) Liability defined.

(i) In general.

(ii) Obligation.

(iii) Other liabilities.

(iv) Effective date.

(b) Increase in partner's share of liabilities.

(c) Decrease in partner's share of liabilities.

(d) Assumption of liability.

(e) Property subject to a liability.

(f) Netting of increases and decreases in liabilities resulting from same transaction.

(g) Example.

(h) Sale or exchange of partnership interest.

(i) Bifurcation of partnership liabilities.

Internal Revenue Service, Treasury

§ 1.752-0

§ 1.752-2 Partner's share of recourse liabilities.

- (a) In general.
- (b) Obligation to make a payment.
 - (1) In general.
 - (2) Treatment upon deemed disposition.
 - (3) Obligations recognized.
 - (4) Contingent obligations.
 - (5) Reimbursement rights.
 - (6) Deemed satisfaction or obligation.
- (c) Partner or related person as lender.
 - (1) In general.
 - (2) Wrapped debt.
 - (d) De minimis exceptions.
 - (1) Partner as lender.
 - (2) Partner as guarantor.
- (e) Special rule for nonrecourse liability with interest guaranteed by a partner.
 - (1) In general.
 - (2) Computation of present value.
 - (3) Safe harbor.
 - (4) De minimis exception.
 - (f) Examples.
 - (g) Time-value-of-money considerations.
 - (1) In general.
 - (2) Valuation of an obligation.
 - (3) Satisfaction of obligation with partner's promissory note.
 - (4) Example.
 - (h) Partner providing property as security for partnership liability.
 - (1) Direct pledge.
 - (2) Indirect pledge.
 - (3) Valuation.
 - (4) Partner's promissory note.
 - (i) Treatment of recourse liabilities in tiered partnerships.
 - (j) Anti-abuse rules.
 - (1) In general.
 - (2) Arrangements tantamount to a guarantee.
 - (3) Plan to circumvent or avoid the regulations.
 - (4) Examples.

§ 1.752-3 Partner's share of nonrecourse liabilities.

- (a) In general.
- (b) Examples.

§ 1.752-4 Special rules.

- (a) Tiered partnerships.
- (b) Related person definition.
 - (1) In general.
 - (2) Person related to more than one partner.
 - (i) In general.
 - (ii) Natural persons.
 - (iii) Related partner exception.
 - (iv) Special rule where entity structured to avoid related person status.
- (A) In general.
- (B) Ownership interest.
- (C) Example.
- (c) Limitation.
- (d) Time of determination.

§ 1.752-5 Effective dates and transition rules.

- (a) In general.
- (b) Election.
 - (1) In general.
 - (2) Time and manner of election.
- (c) Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.

§ 1.752-6 Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003.

- (a) In general.
- (b) Exceptions.
 - (1) In general.
 - (2) Transactions described in Notice 2000-44.
- (c) Example.
- (d) Effective date.
 - (1) In general.
 - (2) Election to apply § 1.752-7.

§ 1.752-7 Partnership assumption of partner's § 1.752-7 liability on or after June 24, 2003.

- (a) Purpose and structure.
- (b) Definitions.
 - (1) Assumption.
 - (2) Adjusted value.
 - (3) § 1.752-7 liability.
 - (i) In general.
 - (ii) Amount and share of § 1.752-7 liability.
 - (iii) Example.
 - (4) § 1.752-7 liability transfer.
 - (i) In general.
 - (ii) Terminations under section 708(b)(1)(B).
 - (5) § 1.752-7 liability partner.
 - (i) In general.
 - (ii) Tiered partnerships.
 - (A) Assumption by a lower-tier partnership.
 - (B) Distribution of partnership interest.
 - (6) Remaining built-in loss associated with a § 1.752-7 liability.
 - (i) In general.
 - (ii) Partial dispositions and assumptions.
 - (7) § 1.752-7 liability reduction.
 - (i) In general.
 - (ii) Partial dispositions and assumptions.
 - (8) Satisfaction of § 1.752-7 liability.
 - (9) Testing date.
 - (10) Trade or business.
 - (i) In general.
 - (ii) Examples.
- (c) Application of section 704(b) and (c) to assumed § 1.752-7 liabilities.
 - (1) In general.
 - (i) Section 704(c).
 - (ii) Section 704(b).
 - (2) Example.
 - (d) Special rules for transfers of partnership interests, distributions of partnership assets, and assumptions of the § 1.752-7 liability after a § 1.752-7 liability transfer.
 - (1) In general.
 - (2) Exceptions.

§ 1.752-1

26 CFR Ch. I (4-1-09 Edition)

- (i) In general.
- (ii) Examples.
- (e) Transfer of § 1.752-7 liability partner's partnership interest.
 - (1) In general.
 - (2) Examples.
 - (3) Exception for nonrecognition transactions.
 - (i) In general.
 - (ii) Examples.
 - (f) Distribution in liquidation of § 1.752-7 liability partner's partnership interest.
 - (1) In general.
 - (2) Example.
 - (g) Assumption of § 1.752-7 liability by a partner other than § 1.752-7 liability partner.
 - (1) In general.
 - (2) Consequences to § 1.752-7 liability partner.
 - (3) Consequences to partnership.
 - (4) Consequences to assuming partner.
 - (5) Example.
 - (h) Notification by the partnership (or successor) of the satisfaction of the § 1.752-7 liability.
 - (i) Special rule for amounts that are capitalized prior to the occurrence of an event described in paragraphs (e), (f), or (g).
 - (1) In general.
 - (2) Example.
 - (j) Tiered partnerships.
 - (1) Look-through treatment.
 - (2) Trade or business exception.
 - (3) Partnership as a § 1.752-7 liability partner.
 - (4) Transfer of § 1.752-7 liability by partnership to another partnership or corporation after a transaction described in paragraphs (e), (f), or (g).
 - (i) In general.
 - (ii) Subsequent transfers.
 - (5) Example.
 - (k) Effective dates.
 - (1) In general.
 - (2) Election to apply this section to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003.
 - (i) In general.
 - (ii) Manner of making election.
 - (iii) Filing of amended returns.
 - (iv) Time for making election.

[T.D. 8380, 56 FR 66350, Dec. 23, 1991, as amended by T.D. 9207, 70 FR 30342, May 26, 2005]

§ 1.752-1 Treatment of partnership liabilities.

(a) *Definitions.* For purposes of section 752, the following definitions apply:

(1) *Recourse liability defined.* A partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752-2.

(2) *Nonrecourse liability defined.* A partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752-2.

(3) *Related person.* Related person means a person having a relationship to a partner that is described in § 1.752-4(b).

(4) *Liability defined*—(i) *In general.* An obligation is a liability for purposes of section 752 and the regulations thereunder (§ 1.752-1 liability), only if, when, and to the extent that incurring the obligation—

(A) Creates or increases the basis of any of the obligor's assets (including cash);

(B) Gives rise to an immediate deduction to the obligor; or

(C) Gives rise to an expense that is not deductible in computing the obligor's taxable income and is not properly chargeable to capital.

(ii) *Obligation.* For purposes of this paragraph and § 1.752-7, an obligation is any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Internal Revenue Code. Obligations include, but are not limited to, debt obligations, environmental obligations, tort obligations, contract obligations, pension obligations, obligations under a short sale, and obligations under derivative financial instruments such as options, forward contracts, futures contracts, and swaps.

(iii) *Other liabilities.* For obligations that are not § 1.752-1 liabilities, see §§ 1.752-6 and 1.752-7.

(iv) *Effective date.* Except as otherwise provided in § 1.752-7(k), this paragraph (a)(4) applies to liabilities that are incurred or assumed by a partnership on or after June 24, 2003.

(b) *Increase in partner's share of liabilities.* Any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership.

(c) *Decrease in partner's share of liabilities.* Any decrease in a partner's share